IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 118 OF 1990
With
FIRST APPEAL NO. 119 OF 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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THE ORIENTAL INSURANCE CO. LTD. - Appellant(s)
Versus
GHANSYAMBHAI BHAILALBHAI PATEL & ORS. - Respondent(s)

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Appearance :
Shri Rajni H. Mehta for Appellant(s).
Shri Nilesh A. Pandya for the Respondents-Claimants.
Despite service of notice on other Respondents, they are not present.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 09/08/2007

COMMON ORAL JUDGMENT

The appellant-Insurance Company has filed these two

appeals being aggrieved by the award dated 21st July, 1989 passed by the learned Motor Accident Claims Tribunal (Main), Vadodara in M.A.C.P. Nos. 440 of 1987 and 624 of 1987.

2. Shri Rajni Mehta, learned Counsel for the appellant, submits that in the present matters, the policy was obtained after the accident, therefore, the Insurance Company would not be liable.

3. Shri Nilesh M. Pandya, learned Counsel for the claimants, submitted that as the policy would commence from 12:00 midnight, the Insurance Company would be liable.

4. In the present matters, the accident took place at about 10:00 a.m. on 3rd March, 1987 and there was a collision between the Tempo Van No. GRQ-7239 and Scooter No. GUV-4146. It was contended before the learned Tribunal that the owner of the vehicle had taken the policy from the Insurance Company at 1:03 p.m. without informing the Insurance Company that the vehicle had already met with the accident. In paragraph 40, the learned Tribunal below has observed that the cover note was issued on 3rd March, 1987 at 1:03 p.m. and in paragraph 42, the learned Tribunal has recorded the argument that there was no valid insurance at the time of the accident. The learned Tribunal, however, observed that the policy would be valid for a period of one year from 3rd

March, 1987 to 2nd March, 1988 and therefore, the Insurance Company would be liable.

5. In the matter of ***New India Assurance Company Limited vs. Smt. Sita Bai & Ors.***, [***2000 ACJ 40***], the Supreme Court had observed that if the policy records the date and time of commencement, which is after the accident, then, the Insurance Company cannot be held liable.

6. In view of the said judgement, the award made against the interest of the Insurance Company deserves to and is, accordingly, set aside. Each of the appeals is allowed and the Insurance Company is exonerated of all its liabilities.

7. The appellant-Insurance Company, in discharge of its liability under the award, has deposited the entire amount with the Tribunal. If the full amount has not been disbursed in favour of the claimants, then, the balance amount be refunded back to the Insurance Company. If some amount or the entire amount has been paid to the claimants, then, the Insurance Company would be entitled to recover the amount from the owner and driver of the tempo van with interest @ 6% per annum from the date they deposited the amount with the Tribunal.

[R.S.Garg, J.]

*kamlesh**